

REMARKS

The present Amendment is in response to the Examiner's Office Action mailed March 9, 2007. No claims are cancelled, amended, or added. Claims 2-3, 5-7, 9, 14-16, 18, 21-30 and 33-34 are now pending.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

I. Examiner's Interview

Applicant's express their appreciation to the Examiner for conducting a telephone interview with Applicants on June 19, 2007. The following remarks are based on the subject matter discussed during the interview.

II. Prior Art Rejections

Page 2 of the Office Action states that claims 2-3, 5-7, 9, 24, 27, and 34 were rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent Number 6,798,809 to Gambin et al. Page 3 of the Office action and the Office Action summary sheet, however, state that claims 14, 21-30, and 33 are allowed. Accordingly, Applicant assumes that the listing of claims 24 and 27 on page 2 of the Office Action is a mistake and that claims 24 and 27 are in fact allowed and thus will not be address these claims in this response. Applicant requests clarification if these claims are not allowed.

Applicants traverse the rejection of independent claim 34 and dependent claims 2-3, 5-7, and 9 for at least the reason that Gambin does not qualify as prior art under 35 U.S.C. 102(e) or any other applicable section. For example, Gambin was filed was filed on **July 16, 2002** and is a continuation-in-part of both U.S. Patent Application No. 09/738,534 and U.S. Patent Application No. 09/738,907, both of which were filed on **December 15, 2000**. The present application was filed on **December 21, 2001**, which is almost 6 months before the filing date of Gambin.

Because Gambin was filed after December 21, 2001-- which is the priority date of the present application -- Gambin is not prior art under Section 102(e) for any “new matter” that was included in the Gambin reference but which was not contained in the original disclosures of U.S. Patent Application No. 09/738,534 and U.S. Patent Application No. 09/738,907 to which Gambin claims priority.

The Office Action states that Gambin discloses a VCSEL that includes at least one quantum well that further comprises antimony (Sb). While it is true that Gambin shows a quantum well with Sb, there is no mention of a quantum well with Sb in either U.S. Patent Application No. 09/738,534 or U.S. Patent Application No. 09/738,907. Accordingly, the disclosure of a quantum well including Sb is “new matter” added after the filing date of the present application and is thus not prior art.

Accordingly, since the recitation of a quantum well including Sb in Gambin is not prior art, any rejection based on this teaching must be withdrawn. Thus independent claim 34 and dependent claims 2-3, 5-7, and 9 are in a condition of allowance.

III. Allowed Subject Matter

The Examiner’s allowance of claims 14, 21-30, and 33 is appreciated. Applicants wish to thank the Examiner for the careful review and allowance of those claims.

The Applicant submits the following comments concerning the Examiner’s statements of reasons for the indication of allowable subject matter in the Office Action. Applicant agrees with the Examiner that the claimed invention of claims 14, 21-30, and 33 is patentable over the prior art, but respectfully disagrees with the Examiners statement of reasons for allowance as set forth in Office Action. Applicant submits that it is the claim as a whole, rather than any particular limitation, that makes each of the claims allowable. No single limitation should be construed as the reason for allowance of a claim because it is each of the elements of the claim

that makes it allowable. Therefore, Applicant does not concede that the reasons for allowable subject matter given by the Examiner are the only reasons that make, or would make, the claims allowable and do not make any admission or concession concerning the Examiner's statement in the Office Action.

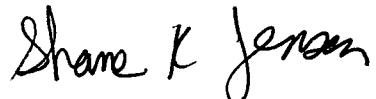
The Examiner has also indicated that claims 15-16 and 18 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicant notes that as these claims are dependent on claim 34, they are also allowable in their present form and therefore the rejection of these claims should also be withdrawn for at least reasons discussed above for claims 34.

CONCLUSION

In view of the foregoing, Applicant believes the claims as amended or presently pending are in allowable form and that every issue raised by the Office Action has been addressed. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorneys.

Dated this 20th day of June, 2007.

Respectfully submitted,



ERIC L. MASCHOFF
Registration No. 36,596
SHANE K. JENSEN
Registration No. 55,301
Attorneys for Applicant
Customer No. 022913
Telephone: (801) 533-9800